

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1261 of 2012

K.Pazhani

..Appellant/Petitioner

Vs

1.L.Thangaraj

2.The New India Assurance Company Ltd.,

No.42, Big Street

Vasavi Buildings

II Floor, Thiruvannamalai

..Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the order and decree dated 20.01.2012 made in M.C.O.P.No.536 of 2009 on the file of Motor Accident Claims Tribunal cum II Additional Sub-Judge, Villupuram.

For appellant : : Mr.N.M.Muthuraja

For Respondents : : Mr.M.Krishnamoorthy for R2.
R-1 Given up.

J U D G M E N T

The Appellant herein is the Petitioner and fled the above appeal challenging the order and decree dated 20.01.2012 made in M.C.O.P.No.536 of 2009 on the file of Motor Accident Claims Tribunal cum II Additional Sub-Judge, Villupuram.

2. For convenience sake, the parties are referred to hereunder according to their litigative status before the Tribunal. The case of the Petitioner/injured Pazhani is that on 01.09.2008 at about 13.10 hurs, while he was riding the motor cycle bearing Reg.No.TN-32-B-1998, while he was going near More Provision Store, K.K.Road, Villupuram, the 1st respondent Lorry bearing Reg.No.TN-27-M-6487 came at high speed, driven in a rash and negligent manner, dashed against the Petitioner's motor cycle from behind causing him multiple grievous injuries.

According to the Petitioner, the accident occurred due to negligence of the 1st respondent Lorry driver only. The Petitioner was admitted in Government Hospital, Villupuram and thereafter, at MIOT Hospital, Chennai, where he was given treatment from 01.09.2008 to 17.09.2008 and again from 05.11.2008 to 27.11.2008 as inpatient. The Petitioner was aged 41 years and he was employed as Teacher in Municipal Higher Secondary School, Villupuram. Due to the injury, the Petitioner was unable to carry on his normal avocation. Hence, the Petitioner sought for a sum of Rs.7,00,000/- as compensation from the respondents.

3. On the other hand, opposing the claim of the Petitioner, by filing counter, the 2nd respondent/Insurance company contends that the accident does not occur in the manner alleged by the Petitioner. It was only due to negligence of the Petitioner who drove the two wheeler bearing Reg.No.TN-32-B-1998 in a rash and negligent manner, the accident occurred. The drivers of both vehicles contributed to the accident. The claim of the Petitioner about his age, income and occupation is denied. The Petitioner has not suffered any permanent disability. The amount claimed by the Petitioner under different heads is highly excessive. The Petitioner has to prove that the 1st respondent lorry bearing Reg.No.TN-27-M-6487 was insured with the 2nd respondent. The Petitioner must also prove that the drivers of both vehicles possessed valid driving licence and there was valid permit, Registration Certificate for the 1st respondent Lorry. The claim of the Petitioner is excessive. Thus, the 2nd respondent sought for dismissal of the Petition.

4. Before the Tribunal, the Petitioner examined himself as P.W.1, and the medical expert as P.W.2, produced documents Ex.P.1 to Ex.P.13 to prove his claim. On the sides of the respondents, 1st respondent was called absent and set exparte, on the side of the 2nd respondent, neither oral nor documentary evidence was let in. The Tribunal, on careful analysis of evidence available before it, found negligence of the 1st respondent Lorry driver alone caused the accident, passed award for a sum of Rs.1,40,000/- payable by the respondents jointly and severally to the Petitioner. Being not satisfied with the quantum of the award passed by the Tribunal, the Petitioner/claimant has come forward with the present appeal.

5. Heard both sides and perused the records carefully.

6. The Learned counsel for the appellant/claimant contends that only due to rash and negligent driving of the 1st respondent vehicle driver, the accident occurred and the Tribunal also accepted the said contention and provided for compensation under different heads. The Tribunal ought to have provided higher

amounts as compensation. The Petitioner having suffered 45% disability is entitled for loss of future earning. Thus, the petitioner/claimant sought for enhancement of the award amount passed by the Tribunal, by entertaining the appeal.

7. Per contra, the learned counsel for the 2nd respondent/Insurance company contends that the Petitioner being a Government Servant has not suffered any loss of income or any other material loss. Thus, the learned counsel for the 2nd petitioner/insurance company sought for dismissal of the appeal.

8. It is only quantum appeal. Both sides have not disputed the conclusion of the Tribunal on liability or negligence issue.

The Tribunal on the basis of the evidence given by P.W.1 and the contents of Ex.P.1-FIR registered against the 1st respondent Lorry driver, concluded that negligence of the 1st respondent lorry driver alone caused the accident.

9. The offending vehicle belongs to the 1st respondent and the same was insured with the 2nd respondent. The Petitioner produced copy of the R.C.Book. It is clear from the Petitioner's evidence that the offending vehicle was insured with the 2nd respondent. The same is not disputed by the 2nd respondent. As such, the Tribunal, by considering the evidence of P.W.1, Ex.P.2-MVI Report as well as Ex.P.3, Ex.P.5-Copy of Insurance Policy and R.C.Book held that the respondents as the owner and insurer are liable to pay the compensation and the said conclusion is just and proper.

10. The Petitioner deposed as P.W.1 and stated that he suffered the following injuries:-

"crush injury in the left foot and leg, multiple fracture of left tibia and fibula".

Ex.P.6 is the Wound Certificate. Further, the Petitioner states that due to the injury suffered, he is not able to attend to his normal work. He also took treatment as inpatient at MIOT Hospital, Chennai, where he was given treatment from 01.09.2008 to 17.09.2008 and again from 05.11.2008 to 27.11.2008 as inpatient. The Petitioner also examined P.W.2 doctor and he clearly stated about the nature of injury suffered by the Petitioner and assessed the disability at 45%. According to P.W.2, on physical examination of the Petitioner and by taking Ex.P.13-X ray, he assessed the disability and issued Ex.P.12-Disability Certificate. Thus, the claim of the Petitioner about suffering from grievous injury and permanent disability is corroborated by P.W.2 evidence. In the absence of any contra evidence, the claim of the Petitioner on the basis of P.W.2 doctor evidence is to be accepted. Thus the disability suffered by the Petitioner is fixed at 45%.

11. Admittedly the Petitioner was employed as a Teacher in a Municipal Higher Secondary School, Villupuram. Therefore, being a Government Servant, he could not have suffered any loss of income. P.W.1 in his cross examination stated that he received the full salary during treatment period, but exhausted his earned leave for getting treatment and in that way, he suffered loss of income. However, there is nothing on record to show that the Petitioner actually availed E.L., or he was on leave without pay. The Petitioner also submitted that he is continuing in service even after the injury suffered by him in the accident. P.W.1 also stated that as a Government servant, he received Rs.2,00,000/- from the Government towards medical expenses. However, the Petitioner contends that having incurred Rs.3,75,000/- towards medical expenses, the sum of Rs.2,00,000/- provided by the Government is not sufficient. It is therefore clear from the above said evidence of P.W.1 that he has not suffered any loss of income or promotional opportunities due to the injury suffered in the accident. Thus, the claim of the Petitioner seeking application of multiplier method in this regard is not sustainable and accordingly, percentage method only is to be adopted. As such, it will be appropriate to award Rs.2000/-, per percentage instead of Rs.1000/- provided by the Tribunal, per percentage of disability. The calculation of the compensation for the disability suffered by the Petitioner is as under:-
$$\text{Rs.2000/-} \times 45\% = \text{Rs.90,000/-}.$$

12. The Petitioner has undergone treatment as inpatient for a considerable length of time as stated above. He has suffered multiple fracture and as such, it will be appropriate to provide Rs.50,000/- towards Pain and suffering undergone by the Petitioner, instead of Rs.40,000/- provided by the Tribunal.

13. The Petitioner having suffered injuries, is entitled for Rs.10,000/- towards Extra Nourishment. The Petitioner having taken treatment as inpatient for 45 days and in view of the injury suffered, he would have definitely required an assistant to take care of him. As such, it will be appropriate to award Rs.3000/- per month towards attender charges for a period of four months. Accordingly, Rs.12,000/- [Rs.3000/- x 4 months] is awarded under the head "Attender charges".

14. The Petitioner underwent treatment for different periods as inpatient and thereafter, took treatment as out patient. The Petitioner claimed Rs.36,000/- towards transport expenses and produced copies of trip sheet to prove the same. The Tribunal had considered the same and provided Rs.25,000/- on the ground that some of the bills are only just and proper. Thus, the sum of Rs.25,000/- provided under the head "Transport Charges" is

confirmed. Considering the nature of injury, it is obvious that the Petitioner would find it difficult to carry on his normal avocation. Therefore, towards "loss of amenities", Rs.10,000/- is provided.

15. The Petitioner has sought for a sum of Rs.1,14,050/- towards medical expenses. Admittedly, the Petitioner received Rs.2,00,000/- from the Government. However, the Petitioner states that he incurred Rs.3,75,000/- towards medical expenses and he has produced Ex.P.10 Medical bills for a sum of Rs.1,14,500/-. Considering the fact that the said medical bills are xerox copies, the Tribunal refused to accept the same and provided a sum of Rs.30,000/- towards medical expenses. Keeping in mind the nature of injury suffered by the Petitioner and Ex.P.10-Medical Bills and coupled with the fact that he received Rs.2,00,000/- from the Government, it will be appropriate to provide him Rs.50,000/- towards "Medical Expenses" including "future medical expenses". The modified award amount is as under:-

Sl.No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1.	Disability	45,000	90,000
2.	Pain and suffering	40,000	50,000
3.	Extra Nourishment	---	10,000
4.	Attender charges	---	12,000
5.	Transport	25,000	25,000
6.	Loss of amenities	---	10,000
7.	Medical expenses	30,000	50,000
	Total	1,40,000	2,47,000

16. In the result,

(i) This Civil Miscellaneous Appeal is Partly Allowed.

(ii) The award amount is enhanced to Rs.2,47,000/- from Rs.1,40,000/-.

(iii) The award amount will carry interest at the rate of 7.5% from the date of petition till the date of realisation;

(iv) The 2nd respondent/Insurance company is directed to deposit the modified award amount along with proportionate accrued interest and cost, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(v)The appellant/claimant is entitled to withdraw the modified award amount along with accrued interest, less the amount already withdrawn. The Tribunal is directed to pass necessary orders following the appropriate procedure for disbursal of the award amount. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

nvsri
To

1.The Motor Accidents Claims Tribunal,
cum II Additional Sub-Judge, Villupuram.

2.The Section Officer,
Vernacular Record Section,
High Court, Madras-104.

+1cc to Mr.N.M.Muthurajan, Advocate Sr.43753

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.43965

सत्यमेव जयते

C.M.A.No.1261 of 2012

rsk[co]
srg 27/08/2018

WEB COPY